

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

MARY WOODARD,

Plaintiff,

v.

CIVIL ACTION NO. 2:05-cv-00719

WAL-MART STORES, INC., and  
BROWN JORDAN INTERNATIONAL, INC.,


Defendants.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is Defendant, Brown Jordan International, Inc.'s Motion to Dismiss [Docket 2]. Brown Jordan International, Inc. alleges that the court should dismiss the complaint because the complaint is barred by the statute of limitations. It alleges that the plaintiff averred in her original complaint that the accident occurred on May 5, 2002 and the complaint was filed on May 5, 2005. If the accident did occur on May 5, 2002, the defendant would be entitled to dismissal of the case because the statute of limitations would have expired on May 5, 2004 due to the 2 year statute of limitations set forth in W. VA. CODE § 55-2-12 (2004). Nevertheless, the plaintiff amended her original complaint and in her amended complaint, the plaintiff does not set forth the date of the accident. The amended complaint, therefore, takes the place of the original complaint. In order for the court to grant the motion to dismiss, the defendant must produce more evidence than the mere fact that the plaintiff originally averred that the accident occurred on May 5, 2002 in a prior pleading that has been displaced by an amended pleading. Accordingly, the court **DENIES** Brown Jordan International, Inc.'s Motion to Dismiss.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: December 6, 2005

  
A handwritten signature in black ink, appearing to read "Joseph R. Goodwin", is written over a solid horizontal line.

JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE